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2 UNITED STATES DISTRICT COURT
3 FOR THE NORTHERN DISTRICT OF CALIFORNIA
4 OAKLAND DIVISION
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6 CALIFORNIANS FOR DISABILITY
7 RIGHTS, INC. ("CDR"), CALIFORNIA
8 COUNCIL OF THE BLIND ("CCB"), BEN
ROCKWELL, AND DMITRI BELSER, on
behalf of all others similarly situated,

9 Plaintiffs,

10 vs.

11 CALIFORNIA DEPARTMENT OF
12 TRANSPORTATION ("CALTRANS") and
WILL KEMPTON, in his official capacity,

13 Defendants.
14

Case No: C 06-5125 SBA

**ORDER RE DISMISSAL OF
COMPLAINT SYSTEM CLAIM**

15 One of Plaintiffs' claims in this action is that Defendants have failed to provide for a
16 meaningful complaint process which would allow the public to notify them of access issues
17 with respect to sidewalks, walkways and other pedestrian facilities. On September 16, 2009,
18 prior to the commencement of trial, Plaintiffs indicated their willingness to dismiss this claim,
19 and to instead pursue it in their pending state court action, in which they are litigating their
20 program access claims (i.e., claims based on existing construction). According to Plaintiffs,
21 their state law causes of action are sufficiently broad to encompass their complaint process
22 claim as to both existing construction as well as new construction and alterations.

23 The Court is persuaded that issues concerning Defendants' complaint system should be
24 resolved in a single forum. While different access standards apply to existing facilities as
25 compared to new construction and alterations, the injury resulting from a barrier is
26 fundamentally the same: lack of access. To the extent that Defendants are found to have a
27 legal obligation to provide for an effective complaint process, that obligation and
28 corresponding remedy should take into account both types of facilities. Given that the parties

1 do not dispute that their program access claims also include their concerns regarding the
2 complaint process, the interests of judicial economy and consistency favor permitting Plaintiff
3 to litigate such claim in that forum. Thus, the Court will allow Plaintiffs to dismiss their
4 complaint process claim in accordance with Federal Rule of Civil Procedure 15(a). See Hells
5 Canyon Preservation Council v. U.S. Forest Serv., 403 F.3d 683, 687-688 (9th Cir. 2005) (Rule
6 15(a) governs dismissals of individual claims). Accordingly,

7 IT IS HEREBY ORDERED THAT Plaintiffs' complaint process claim is DISMISSED
8 without prejudice to pursuing such claim in their pending state court action.¹

9 IT IS SO ORDERED.

10 Dated: September 18, 2009

11 
12 SAUNDRA BROWN ARMSTRONG
13 United States District Judge
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27 ¹ The instant dismissal forecloses Plaintiffs from further litigating their complaint process
28 claim in *this* forum. Said dismissal is not an adjudication on the merits and does not foreclose
Plaintiffs from pursuing said claim in state court under either state and/or federal law.